

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Regarding: Charles O. Townley
Serial No. 10/758,455
Filing Date 01/15/2004
Docket No. THUMB-604DIV
For MODULAR BASAL THUMB JOINT IMPLANT

RECEIVED
CENTRAL FAX CENTER

SEP 15 2008

Remarks Concerning Refusal to Consider I.D.S.

Attention: Group Art Unit 3738
Primary Examiner Brian E. Pellegrino

Commissioner for Patents, Alexandria, VA 22313-1450:

I certify that this correspondence is facsimile-transmitted to the Patent and Trademark Office (571 273 8300) on 15 SEP 2008:

Christopher John Rudy: Christopher John Rudy 9/15/2008.

Thank you for the 09/09/2008 Office communication with its Advisory Action After the Filing of an Appeal Brief. This paper concerns the fourth item of the advisory, the refusal to consider the Information Disclosure Statement filed on August 27, 2007.

The art cited in that Information Disclosure Statement is cumulative to art of record. Moreover, the three U.S. patents cited thereon were known to the Examiner, and he mentioned them in a telephone interview that he initiated on June 26, 2006 with the undersigned in parent patent application No. 09/352,472. The cited international publication was an international priority publication cited on the face of one of those three U.S. patents.

The Applicant was trying to simplify prosecution and help the Examiner by citing that art in the present case, rather than having had the Examiner cite it, since the Examiner noted the art in the parent case and as part of the thorough search he is to conduct is required to consider pertinent art from a parent case. See, e.g., 37 CFR 1.104(a)(1); MPEP 719.05II(E) and 904.

Looking at it now, if the Examiner considered such art pertinent, he would have cited it in the present case. Likewise, he might have applied one or more of the same in a rejection.

Respectfully,

Dated: September 15, 2008 A.D.

Christopher John Rudy
Christopher John Rudy
USPTO Reg. No. 31,873
209 Huron Avenue, Suite 8
Port Huron, Michigan 48060
Telephone (810) 982-4221